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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,400	01/15/2002	Dennis J. Michaelson	STES104	7667

21658 7590 07/26/2006

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EXAMINER

CHORBAJI, MONZER R

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 07/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/050,400	Applicant(s) MICHAELSON ET AL.	
	Examiner MONZER R. CHORBAJI	Art Unit 1744	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 July 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☒ They raise the issue of new matter (see NOTE below);
 (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 2,4,5 and 7-17.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
 13. ☐ Other: _____.


 GLADYS JP CORCORAN
 SUPERVISORY PATENT EXAMINER

Continuation of 3. NOTE: Instant independent claim 2 includes newly added features that requires further search and also additional evaluation.

Response to Arguments

On page 9 of the Remarks/Arguments section, applicant argues that, "However, a review of the Temple reference itself (a marked up copy of the figures are shown in the attached Exhibit) shows that there are no flanges connected to the top portions of the opposing walls as the plain language of the claim requires. Furthermore, the items that the examiner has asserted to be flanges, are not only not connected to the top of the opposing walls, they also fail to be horizontally disposed or to contain any holes therein." The examiner disagrees since the Temple rack includes a pair of horizontally disposed flanges attached to the tops of the opposing sidewalls (figure 3:28, 18 and 17) and each of flanges having a hole therein (28 in figure 3 has unlabeled hole within it). In addition, the Temple reference teaches a top handle having a horizontally oriented rail (figure 4:22 has unlabeled horizontally oriented top bar) that is capable of receiving and vertically holding plurality of dental or orthodontic pliers placed in the rack.

On page 9 of the Remarks/Arguments section, applicant argues that, "Furthermore, the shelves in the Temple references are folding wire racks that are configured to hold cigarettes upon folding shelves and have no connection with the opposing sides of the rack. These items are made from wire and as such do not have true sides or surfaces but more correctly form a support structure upon which the cigarette cartons can be placed. The examiner disagrees since Temple does not limit the rack to supporting cigarette cartons only; the rack is capable of supporting any type of container (col.1, lines 2-4) and the horizontal shelves are attached to the opposing side walls (upper shelf in figure 3 is attached to opposing side walls 17 and 18) where the upper shelf in figure 3 has unlabeled surfaces of the upper portions of wires unlabeled sides of the wires.

On page 9 of the Remarks/Arguments section, applicant argues that, "Applicant has further amended claim 2 so as to require that the shelves are in contact with the opposing sides and the back of the device, and that these flanges are not only horizontally disposed but that these flanges also extend in a horizontal plane." Argument presented by Applicant is with respect to amended claim 2, which have not been entered.

On page 10 of the Remarks/Arguments section, applicant argues that, "However, a review of the attached drawing from the Ochs device clearly shows that all of the features of claim 2 are not present in this reference. The Ochs device does not have horizontally disposed flanges with holes that are connected to the top portion of the sides see Exhibit 2. These features are however, shown in the attached Figure 1 from the present application see Exhibit 3. A simple comparison of these two items clearly shows that the claimed features which are present in the pending application are not present in the Ochs reference." The examiner disagrees. Ochs discloses a rigid transport rack (figure 1, col.1, lines 15-16 and col.1, lines 50-55) that includes a pair of horizontally disposed side flanges (unlabeled horizontal bars in side walls 12 of figure 1 connected vertically to each other with hooks 21 on both sides of the rigid transport rack) attached to the tops (figure 1:9 and 16) of the side walls (figure 1:12) where each of opposing flanges has one hole therein (hole within the side flange of unlabeled horizontal bars in side walls 12 of figure 1 connected vertically to each other with hooks 21) and a horizontal shelf attached to opposing side walls (figure 1:20). In evaluating the instant claims, the examiner is not limited to construe the structural limitations to the submitted Exhibit 3.